

1078

CERTIFICATE AND
LIMITED PARTNERSHIP AGREEMENT
OF
SOUTHBROOK VILLAGE SHOPPING CENTER, LTD.

THIS AGREEMENT of limited partnership was executed on the 12 day of June, 1986, BY ERNEST JOSEPH and JOE J. JOSEPH (sometimes referred to herein as the "General Partners"); and ERNEST JOSEPH, JOE J. JOSEPH, ZAFIRA D. JOSEPH and YVONNE D. JOSEPH (sometimes referred to herein as the "Limited Partners"). The General Partners and the Limited Partners are sometimes collectively referred to herein as the "Partners".

IN CONSIDERATION OF the mutual covenants expressed below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Partners hereby agree as follows:

ARTICLE 1. FORMATION AND TERM.

1.1 Formation and Name: The Partners hereby form a limited partnership pursuant to the provisions of the Alabama Limited Partnership Act, §10-9A-1, et seq., Code of Alabama (1975), on the terms and conditions herein set forth, which shall conduct business under the name "SOUTHBROOK VILLAGE SHOPPING CENTER, LTD.".

1.2 Character of Business. The business and purpose of the Partnership is: (a) to acquire, own for profit, manage, and dispose of certain real property more specifically identified in Exhibit A attached hereto and incorporated herein by reference, together with all improvements constructed and located thereon, situated in Shelby County, Alabama; (b) to do all things reasonably incident thereto, including borrowing money for Partnership purposes; securing such borrowings by pledge, lien, or mortgage; furnishing services incidental to such purposes; and making any other expenditures or investments incidental or reasonably related to such Partnership purposes; and (c) to engage in any lawful activity for profit related to the foregoing purpose, including the management of such property.

1.3 Location of Principal Place of Business. The principal place of business of the Partnership shall be at 1560 Montgomery Highway, Birmingham, Alabama 35216, or at such other place as the General Partners may designate. Said office shall constitute the office required to be maintained under Section 10-9A-3, Code of Alabama (1975), and the records

(Signature)

required to be maintained by the Partnership under Section 10-9A-4, Code of Alabama (1975), shall be maintained at such office. The Partnership's agent for service of process at such office is Ernest Joseph, and the address of such agent in Alabama shall be the principal office of the Partnership listed above.

1.4 Term: The Partnership shall commence on the date of filing of this Certificate of Limited Partnership in the office of the Judge of Probate of Jefferson County, Alabama and shall continue until December 31, 2020; provided, however, that the Partnership shall be dissolved and terminated prior to such date upon:

(a) Any disposition by the Partnership of all or substantially all of its assets, including any mortgage, leasehold, securities, or other interests which may be acquired by the Partnership in exchange therefor; or

(b) As otherwise provided in Section 9.1 hereof.

ARTICLE 2. PARTNERS' INTERESTS AND CAPITAL.

2.1 Capital Contributions and Percentage Interests.

(a) Capital Contributions. Each of the General Partners and each of the Limited Partners has contributed to the capital of the Partnership, in accordance with the Percentage Interests set forth below, an undivided interest in, and all right, title and interest to, the real property and improvements more specifically identified in Exhibit A attached hereto and incorporated herein by this reference. The Partners have agreed that said property has a value of \$830,000, and that such aggregate amount shall be credited to the Partners' capital accounts in accordance with the Percentage Interests set forth below.

(b) Percentage Interests. The Partners shall have the following respective interests (the "Percentage Interests") in the profits, losses and capital of the Partnership:

<u>General Partners</u>	<u>Percentage Interest</u>
Ernest Joseph	5.0%
Joe J. Joseph	5.0%
	<u>10.0%</u>

Limited Partners

Percentage Interests

Ernest Joseph	35.0%
Joe J. Joseph	35.0%
Zafira D. Joseph	10.0%
Yvonne D. Joseph	10.0%
	<u>90.0%</u>

2.2 Capital Accounts:

(a) Maintenance of Accounts: A separate capital account shall be maintained for each Partner. Each Partner's capital account currently consists of the agreed upon value of the initial contribution of such Partner as indicated in Section 2.1 hereof.

(b) Increases: The capital accounts of the Partners shall be increased by:

(1) The amount of any additional contributions to capital made by such Partner; and

(2) The amount of income allocated to such Partner under the terms of this Agreement.

(c) Decreases: The capital account of each Partner shall be decreased by:

(1) The amount of losses allocated to such Partner under the terms of this Agreement; and

(2) All amounts paid or distributed to such Partner under the terms of this Agreement (other than payments to any Partner on account of loans to the Partnership or on account of services rendered to the Partnership).

ARTICLE 3. PROFITS, LOSSES AND DISTRIBUTIONS.

3.1 Partnership Losses and Profits: The net profits and losses derived from the operations of the Partnership, and each item of income, gain, loss; deduction or credit entering into the computation thereof, shall be allocated to the Partners according to the respective percentage interests shown in Section 2.1 above (herein "Percentage Interests").

3.2 Distributions:

(a) Cash Flow Distributions: The General Partners shall from time to time, but no less often than annually, distribute any Partnership cash flow to the Partners. Such distributions shall be made in accordance with the Partners' respective Percentage Interests.

(b) Cash Flow Defined: For the purposes of this Agreement, the term "cash flow" shall mean the gross revenues of the Partnership less:

- (1) Operating expenses of the Partnership ;
- (2) Principal and interest payments in connection with any Partnership obligation; and
- (3) Reasonable reserves established by the General Partners.

ARTICLE 4. STATUS OF LIMITED PARTNERS

4.1 No Additional Contributions. Notwithstanding the allocation of losses to the Partnership, the Limited Partners shall not be required to make any additional contributions to the capital of the Partnership.

4.2 Limited Liability to Creditors: The Limited Partners, as such, shall not be personally liable to any creditors of the Partnership for any expenses, liabilities or obligations of the Partnership and shall not be required to endorse any obligations of the Partnership. Nothing shall remove, affect or diminish the limitation of liability stated herein. The Partnership creditors shall have no right to look to and are hereby notified that they may not look to the personal estate of any Limited Partner for satisfaction of a Partnership debt.

4.3 Business of the Limited Partnership: A Limited Partner, unless he is also a General Partner, shall not take part in the conduct, management or control of the business of the Partnership and shall have no right or authority to act for or to bind the Partnership in any manner whatsoever.

ARTICLE 5. CONTROL AND MANAGEMENT.

5.1 Authority of the General Partners:

(a) Reservation of Authority. The General Partners alone are authorized to transact the business of, sign for, and bind the

Partnership. The General Partners shall be solely responsible for the management and conduct of the Partnership business. Unless otherwise provided herein, all such decisions shall require the consent of both General Partners.

(b) Specific Powers: In addition to the powers conferred by law, the General Partners, in their absolute discretion, shall have the following specific powers on behalf of the Partnership:

(1) To manage the Partnership and to take such action on behalf of the Partnership as may in their judgment be necessary or desirable in conducting and carrying on its business;

(2) To borrow monies on behalf of the Partnership under such terms and conditions as they may deem advisable and proper, and to secure such transactions with the Partnership properties or any part thereof;

(3) To sell, lease, exchange or convey title to, and grant options for the sale of, all or any portion of the property of the Partnership, without limits to the terms thereof, whether or not such terms, including renewal terms, shall extend beyond the date of termination of the Partnership;

(4) To refinance, recast, modify or extend any of the obligations of the Partnership and the instruments securing the same;

(5) To deposit Partnership funds in an account or accounts to be established at such time or times in such financial institution or institutions, and to authorize withdrawal of such funds by such persons, and at such times, and in such amounts, as the General Partners may designate;

(6) To coordinate all accounting and clerical functions of the Partnership and employ such accountants, lawyers, and other agents, on such terms and for such consideration as the General Partners deem advisable;

(7) To procure and maintain with responsible companies such insurance as may be available and in such amounts and covering such risks as are deemed appropriate by the General Partners;

(8) To settle and compromise claims by and against the Partnership when, in the judgment of the General Partners, any such act shall be in the best interest of the Partnership;

(9) To make such elections under the tax laws of the United States, the several states, and other relevant jurisdictions as to the treatment of items of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters as believed necessary or desirable;

(10) To exercise all administrative powers within the Partnership, to preside at all meetings of the Partnership and to be the sole representatives of the Partnership in all transactions with third parties;

(11) To be reimbursed for all reasonable and documented expenses incurred in conducting the Partnership business, or costs associated with the development, organization, and operation of the Partnership;

(12) To be entitled to receive reasonable compensation for services rendered by them with respect to the Partnership's real estate, including, without limitation, leasing fees, brokerage commissions, or such other compensation as may be appropriate; and

(13) To execute any and all instruments, and to pay out of the Partnership funds such expenses as are necessary to carry out the intentions and the purposes of the above powers.

(c) Execution of Instruments: Except as provided in Section 5.1(d) and Section 8.2(c), any Deed, Bill of Sale, Mortgage, Security Agreement, Lease, Contract of Sale, Joint Venture Agreement, or other instrument purporting to convey or encumber the interest of the Partnership in all or any portion of its real or personal property, shall be signed by each of the General Partners on behalf of the Partnership, and no other signatures shall be required.

(d) Tenant Leases: Notwithstanding any other provision of this Agreement to the contrary, any one General Partner shall be authorized, on behalf of the Partnership, to execute tenant leases for Partnership property, on a lease form approved for use by the General Partners. Any such tenant leases, so

executed by any General Partner, shall be binding upon the Partnership.

5.2 Restrictions on Rights and Powers: Notwithstanding the foregoing grant of rights and powers, the General Partners shall not have the authority to admit additional Partners without the consent of all Partners, to confess a judgment against the Partnership, or to do any act in contravention of this Agreement.

5.3 Indemnification of General Partners: Neither General Partner shall be liable to the Partnership or any other Partner for any loss or liability incurred in connection with any act performed or omitted in accordance with the terms of this Agreement, nor for negligence or any other matter, except for any loss or liability incurred in connection with the fraud, willful misconduct or gross negligence of such General Partner. Each General Partner shall be indemnified and held harmless by the Partnership from and against any and all liability arising from or sustained by reason of any act or omission done or omitted to be done in the course of conducting the Partnership business, except for bad faith or willful or wanton misconduct. This indemnification shall include, without limitation, reasonable costs and expenses of litigation and appeal.

5.4 Rights of the Limited Partners: In addition to the other rights granted hereunder, the Limited Partners shall have the right, at reasonable time and upon reasonable notice to inspect the Partnership books and records and to otherwise be informed of Partnership transactions. The General Partners, in their discretion, may consult with the Limited Partners or any one of them with respect to matters not requiring the approval of the Limited Partners under the terms of this Agreement, but decisions with respect to such matters shall be within the sole authority of the General Partners.

ARTICLE 6. SPECIAL POWER OF ATTORNEY.

6.1 Appointment: Each of the Limited Partners hereby makes, constitutes and appoints each of the General Partners as his true and lawful attorney in his name, place and stead to make, execute, swear to, acknowledge, deliver, file and record:

(a) Any certificate or other instrument which may be required by law to be filed by the Partnership, including, but not limited to, Certificates of Limited Partnership and Amendments thereto; and

(b) Any amendments to this Agreement which do not adversely affect the rights of the Limited Partners or diminish the obligations or increase the rights of the General Partners hereunder.

6.2 Restriction: The power of attorney granted hereby shall not constitute a waiver of, but shall be exercised in accordance with, the provisions of this Agreement.

6.3 Terms: The power of attorney granted herein:

(a) Is coupled with an interest;

(b) Is irrevocable;

(c) Shall survive the death, incompetency, legal disability, dissolution, or bankruptcy of the Limited Partners;

(d) Shall survive the delivery of, and assignment by, a Limited Partner of the whole or any portion of his interest as permitted herein, except that where the assignee thereof has been approved by the General Partners for admission into the Partnership as a substituted Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partners to execute, acknowledge and file any instrument necessary to effect such substitution;

(e) May be exercised by any General Partner for each Limited Partner, or any of them, by listing all, or any, of the Limited Partners required to execute any such instrument, and executing such instrument, as attorneys in fact for all or any one of them, or in such other manner, as the General Partners may deem appropriate; and

(f) Shall be binding on any assignee of a Partnership interest herein, or any portion thereof, including the assignment of only the distributive rights relating thereto.

ARTICLE 7. RESTRICTIONS ON TRANSFER.

7.1 General Prohibition: No Partner shall transfer, sell, assign, give or otherwise dispose of his Partnership Interest or any part thereof, whether voluntarily or by operation of law, or a judicial sale or otherwise, to any person, firm or corporation, except with the written consent of the General Partners; provided, however, that a Limited Partner may sell

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all or a portion of his interest after offering such interest to the other Partners, in accordance with Section 7.2 below, and any Partner may transfer Limited Partnership interests to his spouse or lineal descendants without the necessity of any consent. Any such transfer in violation of this Article 7 shall be null and void, shall not vest any rights in the Partnership in the purported transferee, and shall not relieve the purported Transferor of any obligations hereunder.

7.2 Right of First Refusal: If any Limited Partner shall receive an acceptable, bona fide offer for the purchase of all or a portion of his interest in the Partnership, he shall notify the other Partners thereof, stating the interest in the Partnership proposed to be transferred, the name and address of the proposed transferee, and the price, terms and other conditions relative to such offer. For a period of ninety (90) days after any such notice is given, the other Partners shall have the right of first refusal to acquire the interest, on the same terms and conditions as offered by the bona fide third party. For the first sixty (60) days during such ninety (90) day period, those Partners who are the spouse, parents or lineal descendants of the Partner proposing to transfer such interest shall have the exclusive right to acquire such interest. Any portion of such interest not subscribed for during such sixty (60) day period shall be made available to all of the other Partners. In the event more than one Partner entitled to acquire such interest shall desire to do so and shall give timely notice to that effect, the interest shall be allocated among the Partners so entitled, according to their proportionate Percentage Interests. At the expiration of the ninety (90) day period herein provided, if the other Partners have not agreed to acquire the entire interest proposed to be transferred, then the Partner proposing to transfer the same shall have the right, for a period of sixty (60) days thereafter, to sell such interest on the same terms, and to the same party, previously disclosed to the other Partners by said notice.

7.3 Admission as Partner: Any Transferee permitted by the terms of this Article shall be admitted as a Partner in the Partnership only upon the execution of such documents as shall be appropriate to bind such Transferee to all the terms and provisions of this Agreement. Any such Transferee shall be admitted as a General Partner of the Partnership only upon the consent of all Partners.

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ARTICLE 8. DISSOLUTION AND TERMINATION.

8.1 Termination of the Partnership: The Partnership shall be dissolved and its business wound up upon the earliest of the following:

(a) The expiration of the term of this Agreement as provided in Section 1.4 hereof;

(b) The written determination of the General Partners, that the Partnership should be dissolved; or

(c) Subject to Section 8.2 below, the death, bankruptcy, or total disability of any General Partner.

8.2 SUCCESSOR GENERAL PARTNERS.

(a) Effect of Events: Upon the death, bankruptcy or total disability of any General Partner, the Partnership shall not be dissolved if, within nine (9) months after such event, (i) a successor General Partner acceptable to the unaffected General Partner is elected by a majority in interest of the Limited Partners entitled to vote thereon, as provided herein, and agrees to serve; or (ii) the Limited Partners entitled hereunder to vote on such successor shall unanimously consent to continuation of the Partnership with the surviving General Partner as sole General Partner. After any such event, the surviving General Partner shall promptly notify the Limited Partners and the representative of the affected general Partner of the provisions hereof.

(b) Entitlement to Vote: Upon the death, bankruptcy or total disability of either General Partner, only those Limited Partners who are spouses or lineal descendants of such General Partner shall be entitled to vote on his successor hereunder, or to consent to the continuation of the Partnership with the surviving General Partner as sole General Partner. For purposes hereof, a "majority in interest" of such Limited Partners shall mean any one or more of the Limited Partners so entitled to vote for consent to such matter who have, collectively, in excess of fifty percent (50%) of the aggregate Percentage Interest of all such Partners who are so entitled.

(c) Effect on Management: Upon the death, bankruptcy or total disability of either General Partner, the unaffected General Partner shall be authorized to manage the affairs of the Partnership, and shall have all authority vested in the General Partners hereunder to be exercisable by the unaffected General

Partner alone, until such time as the Limited Partners entitled to vote thereon have elected a successor General Partner or have consented to the continuation of the Partnership with the surviving General Partner as sole General Partner. Upon the expiration of the six (6) month period provided in Section 8.2(a), the Partnership shall be dissolved, unless a successor has been elected and agrees to serve, or the continuation without a successor is authorized, in accordance with the provisions of this Section 8.2.

8.3 Dissolution and Liquidation of the Partnership:

(a) Priorities: In the event of the dissolution of the Partnership which results in the winding up of its affairs, its liabilities shall be paid in the order provided herein. The Partnership properties shall be distributed in kind, subject to existing liabilities, or be promptly be sold at a price and in a manner deemed reasonable by the General Partners and the proceeds thereof, as well as all other cash and properties of the Partnership, shall be distributed in the following order:

(1) to pay the expenses of liquidation and debts and liabilities of the Partnership (including debts and liabilities to any Partners), in the order of priority provided by law, excepting, however, the claims of any secured creditors whose obligations will be assumed or otherwise transferred on the liquidation of the Partnership assets;

(2) to establish any reserves which the General Partners deems reasonably necessary for any contingencies or unforeseen liabilities or obligations of the Partnership, such reserves to be paid over by the General Partners to an escrow agent or held by the General Partners in trust for the payment of any of the aforementioned contingencies, with the balance of such reserves to be distributed in the manner and order provided in this Section at the expiration of such period as the General Partners shall deem reasonably advisable; and

(3) the balance, if any, shall be distributed in accordance with Section 3.2 above.

(b) Cancellation of Certificate: Upon the dissolution of the Partnership in accordance with the terms hereof, the Partnership shall terminate and the General Partners shall execute, acknowledge and cause to be filed a Certificate of

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cancellation of the Partnership, whereupon it will cease to exist in all respects.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

9.1 Other Ventures: Any of the General or Limited Partners may engage in or possess an interest in other business ventures of every nature and description, independently or with others. Neither the Partnership nor any of the other Partners shall have, by virtue of this Agreement, any right in and to such independent ventures or to the income or profits derived therefrom.

9.2 Notices: Any notices or documents required or desired to be given to any Partner under the terms of this Agreement shall be in writing and shall be deemed given when delivered personally to such a Partner or Partners, or their personal representatives or successors in interest, or when deposited in the United States mail, first class, postage prepaid, and addressed to such a Partner at the address shown on the signature page below, hereof, or to such other notice address as such Partner shall designate by notice to all other Partners.

9.3 Applicable Law: This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Alabama.


9.4 Entire Agreement: This writing constitutes the entire Agreement of the parties and supersedes any prior understandings or agreements among the parties with respect to its subject matter. There are no representations, arrangements, understandings or agreements among the parties hereto relating to the subject matter of this Agreement, except those expressed herein. Except as otherwise provided in this Agreement, no changes, alterations, modifications, additions or qualifications to the terms of this Agreement shall be made or be binding unless made in writing and signed by each of the then Partners.


9.5 Successor in Interest: Except as otherwise provided herein, all provisions of this Agreement shall be binding upon, inure to and be enforceable by and against the respective heirs, executors, administrators, personal representatives, successors and assigns of any of the parties to this Agreement..

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.


GENERAL PARTNERS:

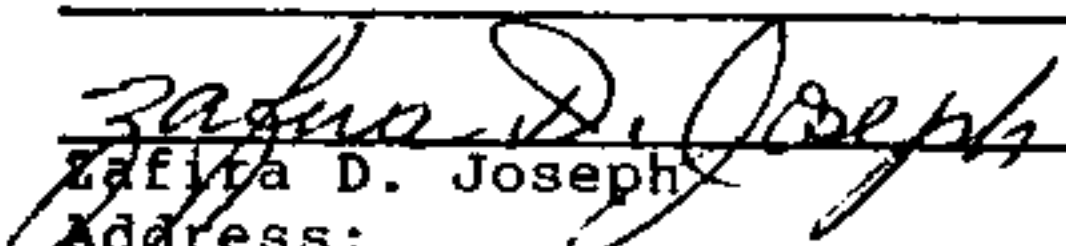

Ernest Joseph
Address: _____



Joe J. Joseph
Address: _____

LIMITED PARTNERS:


Ernest Joseph
Address: _____


Joe J. Joseph
Address: _____


Zafira D. Joseph
Address: _____


Yvonne D. Joseph
Address: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ernest Joseph, whose name is signed as a General Partner and as a Limited Partner, to the foregoing Certificate and Limited Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12 day of June, 1986.



William R. Sylvestre
Notary Public

My Commission Expires: 9-26-89

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Joe J. Joseph, whose name is signed as a General Partner and as a Limited Partner, to the foregoing Certificate and Limited Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12 day of June, 1986.

William R. Sylvestre
Notary Public

My Commission Expires: 9-26-89



STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Zafira D. Joseph, whose name is signed as a Limited Partner, to the foregoing Certificate and Limited Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12 day of June, 1986.



Marie R. Chetani
Notary Public

My Commission Expires: 2-18-87

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Yvonne D. Joseph, whose name is signed, as a Limited Partner, to the foregoing Certificate and Limited Partnership Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 13 day of June, 1986.

Marie R. Chetani
Notary Public

My Commission Expires: 2-18-87

1903L

A parcel of land situated in the SW1/4 of the NE1/4 of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama and being more particularly described as follows; Commence at the Southwest Corner of the SW1/4 of NE1/4; thence East along the South line thereof a distance of 500.51 feet to the point of beginning; thence continue along last described course a distance of 290.15 feet; thence left 141 deg. 22 min. 49 sec. and run Northwest 118.15 feet; thence 90 deg. right and run Northeast 32.0 feet; thence 90 deg. left and run Northwest 445.66 feet; thence left 107 deg. 39 min. 31 sec. and run Southwest 26.24 feet; thence 72 deg. 20 min. 29 sec. left and run Southeast 185.59 feet; thence right 52 deg. 38 min. 44 sec. and run South 236.63 feet to the point of beginning; being situated in Shelby County, Alabama.

Parcel 2

A parcel of land situated in the SW 1/4 of the NE 1/4 of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama and more particularly described as follows; Commence at the SW corner of the SW 1/4 of the NE 1/4; thence East along the South line thereof a distance of 790.66 feet; thence left 141 deg. 22 min. 49 sec. and run Northwest 63.59 feet; thence 90 deg. right and run Northeast a distance of 240.0 feet to the Point of Beginning; thence continue on last described course 75.0 feet; thence 90 deg. left a distance of 440.0 feet; thence 90 deg. left, a distance of 75.0 feet; thence 90 deg. left, a distance of 440.0 feet to the point of beginning; being situated in Shelby County, Alabama.

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RECORDING FEES	
Recording Fee	\$ <u>40.00</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>41.00</u>

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 JUN 13 PM 4:08

Thomas A. Spivey, Jr.
JUDGE OF PROBATE

EXHIBIT A

